

SOUTHERN ENVIRONMENTAL LAW CENTER

Telephone 919-967-1450

601 WEST ROSEMARY STREET, SUITE 220
CHAPEL HILL, NC 27516-2356

Facsimile 919-929-9421

February 26, 2021

VIA ELECTRONIC MAIL

Via FOIAonline (foiaonline.regulations.gov)

Regional Freedom of Information Officer
U.S. EPA, Region 4
AFC Bldg., 61 Forsyth Street, S.W., 9th Flr (4PM/1F)
Atlanta, GA 30303-8960

Re: FOIA Request: Correspondence Between EPA and the North Carolina Department of Environmental Quality Regarding Cyanide Enforcement Limit

Dear FOIA Officer:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 and 40 C.F.R. §§ 2.100-2.507, the Southern Environmental Law Center (“SELC”) respectfully requests copies of all documents, communications, or other records related to any EPA agreement with the North Carolina Department of Environmental Quality (“NC DEQ”), formerly called North Carolina Department of Natural Resources, regarding the enforcement limit for cyanide. SELC also requests correspondence between EPA and NC DEQ regarding scientific support, administrative guidance, or memos outlining the application of and reasoning behind the agreed upon enforcement limit for cyanide.

For purposes of this request, the term “records” includes all written, printed, recorded, or electronic materials, communications, correspondence, memoranda, notations, copies, diagrams, charts, books, papers, maps, photographs, data, tables, spreadsheets, formulas, directives, observations, impressions, contracts, letters, messages, and mail in the possession, custody, or control of EPA or its agents. Please provide any electronic records in native file format.

In addition, we request access to each and every version of a record or document, whether it is a draft, has been electronically deleted, has attachments, bears annotations, etc. Please also include all responsive records generated up to the date of the agency’s search for records responsive to this request.

FOIA directs a responding agency to make a “determination” on any request within twenty working days of receipt. 5 U.S.C. § 552(a)(6)(A); 40 C.F.R. § 2.104(a). Pursuant to 40 C.F.R. § 2.104(h), in addition to making responsive documents available for request, should you determine that certain documents are responsive to this request and choose not to produce them on the basis of any claimed privilege or exemption from disclosure, we request that you produce a detailed list of those documents, including: the date of the document; the authors and recipients; the subject matter of the document; and the basis for the claimed privilege or exemption for disclosure. Further, where a document contains specific information that you claim is exempt or privileged, we request that you simply redact the information so claimed and

produce the document in redacted form. The redacted information should be included in the list of privileged or exempt information just described.

Because releasing these records is in the public interest, we request a fee waiver for costs associated with conducting this search. The disclosure of the requested records would be in the public interest because it is likely to contribute significantly to public understanding of North Carolina's water quality programs and enforcement of water quality standards.

SELC has no commercial interest in any information or documents related to this request. SELC is a 501(c)(3) non-profit organization working to protect the natural resources of the Southeast and, in particular, to gather, analyze, and disseminate public information about matters of conservation and environmental protection. SELC has been involved in protecting North Carolina water quality, including monitoring numerous sites with the potential to harm our communities and ecosystems. SELC intends to disseminate the information gathered through this request to the general public through press releases, social media, public comment letters, and its website, southernenvironment.org, which is updated regularly.

We request that you waive any search and duplication fees and provide the requested records without charge, or at a reduced charge, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). A fee waiver is appropriate because SELC does not have a commercial interest that would be furthered by the requested disclosure. SELC is a 501(c)(3) non-profit organization that provides legal representation to other 501(c)(3) non-profits and public advocacy free of charge. Our intended use of the requested materials is to protect North Carolina water quality and to continue to disseminate this information to the public through the many channels described above. All of the activities described above have been, and will continue to be, provided to the public by SELC and our clients for no payment. Courts have recognized that Congress intended FOIA's fee waiver to be "liberally construed in favor of waivers for noncommercial requesters." *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987).

Should SELC's request for reduced or waived fees be denied, we are prepared to bear the reasonable costs necessary to fulfill this request, although we request that you contact us before processing this request to discuss fees. We reserve our right to appeal a denial of our request for a fee waiver or reduction. We request that information be delivered electronically, by a file-sharing service, removable storage, or email, to the extent possible. We are happy to coordinate provision of a file-sharing service.

Thank you for your prompt attention to this matter. In the event you deny our request, we ask that you inform us of the grounds for denial and the specific administrative appeal rights that are available. Finally, because the volume of records responsive to our request may be large, we are willing to work with your agency to minimize the work necessary to respond. Please contact me at (919) 967-1450 or hpetersen@selcnc.org with any questions and to arrange for electronic transmission of the requested documents.

Sincerely,

A handwritten signature in black ink, reading "Hannah Petersen". The signature is fluid and cursive, with the first name "Hannah" and last name "Petersen" clearly distinguishable.

Hannah Petersen
Associate Attorney